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SOL (MSHA) v. MULZER STONE
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Federal Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceeding Docket No. LAKE 80-299-M A.C. No. 12-00084-05005
v.	
MULZER CRUSHED STONE COMPANY, A PARTNERSHIP, RESPONDENT	

DECISION

Appearances: Steven E. Walanka, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois for Petitioner; Philip E. Balcomb, Mulzer Crushed Stone Company, Tell City, Indiana, for Respondent.

Before: Administrative Law Judge James A. Laurenson

JURISDICTION AND PROCEDURAL HISTORY

This is a proceeding filed by the Secretary of Labor, Mine Safety and Health Administration (hereinafter MSHA) under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) (hereinafter the Act), to assess a civil penalty against Mulzer Crushed Stone Company (hereinafter Mulzer) for a violation of a mandatory standard. The proposal for assessment of a civil penalty alleges a violation of 30 C.F.R. 56.12-25 in that the surge tunnel feeder did not have a frame ground.

The parties filed preliminary statements and a hearing was held in Evansville, Indiana on February 24, 1981. Inspector George LaLumondiere testified on behalf of MSHA. Nelson R. Paris testified on behalf of Mulzer. Both parties submitted posthearing briefs.

ISSUES

Whether Mulzer violated the Act or regulations as charged by MSHA and, if so, the amount of the civil penalty which should be assessed.

APPLICABLE LAW

30 C.F.R. 56.12-25 provides as follows: Mandatory. All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection. This requirement does not apply to battery-operated equipment.

Section 110(i) of the Act, 30 U.S.C. 820(i), provides in pertinent part as follows:

> In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalties, the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

STIPULATIONS

The parties stipulated the following:

1. That the Administrative Law Judge had jurisdiction in matters related to the Mine Safety and Health Act of 1977.

2. That the inspector who issued the citation was a duly authorized representative of the Secretary of Labor.

3. That the size of the mine as to production of tons or man-hours per year is 179,118.

4. That the size of the company as to production tons or man-hours per year is 469,971.

5. That the proposed assessment will not harm Respondent's ability to continue its operations.

6. That Citation No. 366846 has been terminated.

7. That Respondent owned and operated a surge tunnel feeder motor on March 12, 1980.

8. That Respondent operates a limestone (crushed and broken) type facility.

9. That Respondent is doing business under the Act and that it is under the commerce provision of the Act.

SUMMARY OF THE EVIDENCE

MSHA contends that the flexible conduit which connected the feeder motor and the solid conduit was the only source of grounding for the motor, and since this flexible conduit was broken off, Mulzer violated 30 C.F.R. 56.12-25 in not providing a ground or equivalent protection. MSHA Inspector, George LaLumondiere, testified that during the course of his regular inspection conducted at Cape Sandy Quarry on March 11, 12, 13, 1980, he

examined the surge tunnel motor for a source of a ground. The only one he observed was the flexible conduit. Although he made no tests for continuity, he assumed that the motor was not grounded since the flexible conduit was loose and not connected to the solid conduit on the belt frame.

Mulzer contends that the flexible conduit was only one of three possible sources of grounding. Mulzer's chief electrician, Nelson Paris, testified that the other sources are the power company's system and the six ground rods located behind the switch house. Mulzer maintains that the conduits provide a ground by covering the wires which transport power to the motor from a starter switch and fuse disconnect mounted on the tunnel wall. The starter box is grounded, thus making the conduit part of another grounding path. Paris explained, however, that the primary purpose of the flexible conduit is to protect the wires from flying material and vibration, and not to provide a ground.

MSHA maintains that the motor frame could not provide a solid ground because the bolts, frame and equipment were rusted. The inspector testified that the frame was bolted to the conveyor belt frame and that the bolts were rusty. Although he did not remove the bolts to examine whether they were rusty inside, he assumed from his prior experience that they were. While concluding that there could be no good ground because of the rusty conditions, he admitted that it is possible to have a solid ground if only the surface of the bolts were rusted. The inspector stated that he made no tests of the equipment because he had no instruments, and would have had to call another inspector to check the grounding efficiency.

Mulzer contends that a primary ground, satisfying the safety standard, is provided by the firm attachment of the motor frame to the grounded conveyor structure. Although Mr. Paris had never seen four loose bolts, he testified that the mere weight of the motor would be capable of carrying a ground even in the absence of the bolts. Six to eight weeks prior to the inspection, the system's grounding capabilities were checked. At that time, the ohm meter read zero ohms, and the system was determined to have good continuity. From this reading Mulzer assumed that the bolts were not rusted on the inside. Mr. Paris stated that, after the citation was issued, the company did not make any electrical tests to determine whether there was adequate grounding. They felt there was no need since the motor was still secure to the frame.

Mulzer argues that the fact that the feeder motor was running at the time of inspection, is evidence that the motor was securely attached to the frame, providing a good grounding path. It claims that in order to maintain the necessary tension on the V-belts sufficient to transmit power from the motor to the feeder, the bolts must be tightened firmly. Therefore, although the bolts were rusted on the exterior, they still provided sufficient pressure to establish intimate contact between the motor and the grounded frame.

At the hearing, the inspector admitted that he was not an electrician. He stated that he has had specific electrical training and previously had

handled electrical problems involving refrigeration and air conditioning. Mr. Paris testified that he has been an electrician for 37 years. He was involved in the installation of the electrical system at the quarry, supervising its open delta system.

DISCUSSION

Having considered all the testimony, evidence, and written arguments submitted in this case, I find that MSHA has failed to prove the fact of violation. MSHA alleged a violation of 30 C.F.R. 56.12-25, yet it has not shown that the surge tunnel motor was not, in fact, grounded.

MSHA maintains that the flexible conduit was the only source of grounding for the motor. It cited Mulzer for a violation of 30 C.F.R. 56.12-25 since the flexible conduit was broken off and could not provide a grounding path. As evidenced by the testimony of the inspector, MSHA's conclusion was based only upon the inspector's visual observations of the motor. He made no tests for continuity and relied only upon his experience in finding a violation.

MSHA also contends that the frame was not a source of grounding because the bolts, frame and equipment were rusted. It was unable, however, to show that the bolts were rusted on the inside. Since the inspector testified that he did not remove the bolts to examine their condition, MSHA has not demonstrated the ineffectiveness of the bolts in securing the motor to the frame. Again, the inspector made no tests of the frame's grounding efficiency.

Mulzer's conclusion that the detached flexible conduit was not sufficient to sustain a violation of 56. 12-25 is supported by the evidence of alternative grounding sources. Mr. Paris' testimony indicates that the frame of the motor provided an effective ground. Mr. Paris testified that the mere weight of the motor, even in the absence of bolts, kept the motor secure to the frame for an adequate ground. This evidence demonstrates the inconsequentiality of a rusted exterior on the equipment's ability to provide a ground.

In their briefs, the parties raise the issue of a violation of 30 C.F.R. 56.18-2 regarding shift inspections. Since MSHA has not cited Mulzer with a violation of this safety standard, it is not a relevant consideration in this proceeding.

Having found that MSHA has not established the fact of violation, it is not necessary to examine the remaining criteria of section 110(i) of the Act. Therefore, the citation alleging a violation of 30 C.F.R. 56.12-25 must be vacated and this proceeding dismissed.

ORDER

WHEREFORE, IT IS ORDERED that Citation No. 366846 alleging a violation of 30 C.F.R. 56.12-25 is vacated and this civil penalty proceeding is DISMISSED.

James A. Laurenson Judge